

**Region 8 Talking Points for Western Governors Association Meeting**  
**25 Feb 2018**

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----- **COLORADO** -----

- The Bonita Peak Mining District
  - Added to the National Priorities List on Sept. 9, 2016. The site includes 35 mines, seven tunnels, four tailings impoundments and two study areas where additional information is needed to evaluate environmental concerns.
  - EPA is developing a Five-Year Plan to foster coordinated response activities at the site. We are also developing a timeline for delisting.
  - EPA is preparing a Focused Feasibility Study for a suite of early interim remedial actions that can begin in 2018. These actions address “low-hanging fruit,” such as moving waste rock from creeks, routing mine drainage away from waste rock piles and removing sediment from settling ponds. EPA plans to release the Proposed Plan for these early interim actions for a 30-day public comment period later this spring.
  - EPA and its agency partners will continue the remedial investigation to determine the nature and extent of contamination from the 48 source areas. Investigation of the Bonita Peak Groundwater System is ongoing.
  - EPA plans to release its Human Health Risk Assessment this spring. The Aquatic Environmental Risk Assessment is scheduled to be released this summer, with the Terrestrial Environmental Risk Assessment being completed in 2019.
  - EPA continues to treat all drainage (approximately 600 gallons per minute) from the Gold King Mine at the Interim Water Treatment Plant at Gladstone. Sludge generated from the IWTP is being disposed of on site, while EPA looks for a location for a permanent sludge repository nearby. EPA is studying the viability of treating additional water. We have a goal of beginning additional treatment, if viable, in mid-2018.
  - EPA is working with private property owners who wish to conduct investigative or clean-up activities on their properties, while it continues to search for potentially responsible parties (PRP) that may be able to contribute to response actions at the site. Sunnyside Gold (PRP) has challenged the listing of the Bonita Peak Mining District on the National Priorities List in court. EPA has testified in defense of the listing. The court is expected to rule in 2-3 months.
  
- Colorado Smelter
  - EPA and the State of Colorado signed the interim Record of Decision (i-ROD) for residential soils and indoor dust cleanups on September 26, 2017. During 2016 and early 2017, 27 indoor dust cleanups were completed under an emergency removal action, and seven additional cleanups were completed under the i-ROD in late 2017.
    - Soil and dust characterization of approximately 1,900 homes in the Colorado Smelter preliminary study area has been a priority since residents spend about 70% of their time in, or at, their own homes. As of February 9, 2018, 680 yards’ soil and 358 homes’ indoor dust has been sampled. We are over 35% done with our assessment work in the study area.
    - Soil and dust characterization has cost about \$5 Million to date, and approximately \$10 Million additional funding is needed to complete the residential effort.

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- On January 31, 2018, 27 Phase I priority outdoor soil removals and yard restorations began under the i-ROD for the residential properties.
  - The soil and indoor dust cleanups are estimated to cost about \$46 Million over 8 years; so far for FY18, we have received \$3.7 Million of approximately \$6.6 Million needed.
  - We are analyzing the remaining site work requirements with the goal of publicizing a delisting date.
- Colorado's 2008 Ozone Attainment Plan
  - On July 20, 2012, the Denver Metro North Front Range (DMNFR) was designated as a "Marginal" nonattainment area (NAA) for the 2008 ozone NAAQS. The challenges facing the DMNFR area for meeting the ozone standard include growth offsetting reductions; mobile, area, and point sources including oil and gas; and background ozone.
  - The DMNFR failed to attain the 2008 ozone NAAQS by the July 20, 2015 attainment date, so the area was reclassified to a "Moderate" nonattainment area in June 2016. Colorado submitted its Moderate area attainment SIP on May 31, 2017.
  - Region 8 is getting ready to propose approval of the Denver attainment SIP for the Moderate area.
  - Region 8 will have a signature on the final rulemaking prior to the July 20, 2018 attainment due date.

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----- **MONTANA** -----

- Butte Superfund Site
  - On January 25, 2018, the negotiating parties (US EPA, US DOJ, Montana DEQ, Montana DOJ, Butte-Silver Bow City/County, and Atlantic Richfield Company) reached conceptual agreement on the terms of a Consent Decree to implement remaining cleanup work at the Butte Priority Soils Operable Unit of the Silver Bow Creek/Butte Area Superfund site.
    - EPA expects to propose an amendment to the 2006 Record of Decision this summer and take public comment on the proposal.
    - After evaluating public comments on the proposal, EPA plans to issue a final decision on amending the Record of Decision.
    - The parties are expected to sign a Consent Decree for the Butte Priority Soils Operable Unit in September/October 2018.
    - EPA plans to oversee construction of remaining cleanup and begin the deletion process for the site by 2024.

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**----- WYOMING -----**

- Wind River TAS
  - In 2013, EPA Region 8 approved an application submitted by the Northern Arapaho and Eastern Shoshone Tribes of the Wind River Indian Reservation to EPA for Treatment in a Similar Manner as a State (TAS) eligibility to administer certain non-regulatory functions under the Clean Air Act. As part of the TAS Decision, EPA concluded that the Reservation boundaries had not been altered or diminished by a Congressional Act in 1905. The State and other entities challenged EPA's determination in the U.S. Court of Appeals for the Tenth Circuit. The result of this decision was that EPA expanded the tribe's boundaries and shrunk the size of the state of Wyoming absent notification to Wyoming. This decision also resulted in confusion about whether past actions taken by the state or locality were valid because tribal law was not applied. Wyoming objected and prevailed in a lawsuit.
    - On February 22, 2017, a split panel of the U.S. Court of the Appeals for the Tenth Circuit issued a decision in favor of the State of Wyoming. In doing so, the court vacated EPA's boundary determination and remanded the case to EPA.
    - On November 7, 2017, the U.S. Court of Appeals for the Tenth Circuit issued an order denying the Tribes' petitions for rehearing en banc. The Court granted, sua sponte, panel rehearing in part and provided a revised decision that did not alter the outcome of the case.
    - On February 16, 2018, both Tribes filed petitions for certiorari to the U.S. Supreme Court.
    - The Solicitor General's Office may decide to, or be requested to, submit its view to the Court.
    - EPA Region 8 is taking initial steps to identify the Reservation boundary changes and to work with the Tribes and the State of Wyoming to assess how the decision affects our respective program implementation responsibilities.
- Exceptional Events (AIR)
  - Wyoming has expressed concerns about some of the new requirements in the revised 2016 Exceptional Events Rule. OAQPS is working with regional offices to manage implementation strategies.
  - EPA's Region 8 Denver office continues to work with Wyoming to address the state's concerns with the 2016 rule in addition to other unique challenges due to Wyoming's large number of industry-operated monitors where exceptional event impacts may have importance to WDEQ in oversight of facility air emissions.
  - R8 will have a call with senior managers at WDEQ to discuss how to address WDEQ's request that EPA act on exceptional events that may not be regulatory significant (as defined in the 2016 rule). After that call, Region 8 will draft a response to WDEQ's latest request for formal EPA concurrence on potential exceptional events that occurred in 2016 and 2017.

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**----- NORTH DAKOTA -----**

- UIC Class VI Primacy
  - EPA has reviewed all public comments received on the proposed approval of North Dakota's application for UIC Class VI primacy, and we anticipate issuing a final determination this spring. If approved, North Dakota would be the first state in the nation to issue Class VI permits regulating the long-term storage of carbon dioxide. Region 8 will send to the Office of Water its recommendation for approval in February. We anticipate a final determination this spring with formal rulemaking to follow.
  - This application has been pending for several years.

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**----- SOUTH DAKOTA -----**

- Dewey Burdock Uranium In-Situ Recovery UIC Permits
  - On March 6, 2017 EPA issued two draft Underground Injection Control (UIC) Area Permits and a proposed aquifer exemption to Powertech (USA) Inc., for injection activities related to uranium recovery near Edgemont, South Dakota. Region 8 is currently reviewing the significant number of comments received during the public comment period, and is working with the company to clarify their comments and obtain additional information. We do not yet have an anticipated timeframe for next steps.
  
- Flat Top Mine Grant Proposal
  - Uranium mining in the 1950's and 60's in Harding County, South Dakota left contaminated wastes in large tracks of public and private land. Flat Top Mine is within private ranch land where cattle and sheep are raised for human consumption. In 2014 EPA received substantial settlement, with Anadarko Petroleum Corporation and Kerr McGee, to be used at or in connection with the Flat Top Mine Site.
    - A consortium of universities from South Dakota and Colorado submitted a grant proposal in April 2017 to evaluate the uptake of heavy metals and radionuclides from soils and water to forage and livestock to address human and animal health and food safety issues.
    - This proposal has support from the local ranching community and EPA has received a letter of support from 8 Senators and Representatives from South Dakota and Colorado.
    - Currently EPA is evaluating this grant proposal.
  
- Keystone Oil Spill Response, near Amherst, South Dakota
  - On November 16, 2017, TransCanada reported a release of approximately 5,000 bbls (210,000 gallons) of crude oil from a 30-inch pipeline near Amherst, South Dakota. The release occurred in a rural area of South Dakota and was contained in a farmer's field. An EPA Federal On-Scene Coordinator responded to assess the spill and response efforts.
    - TransCanada has completed excavation and removal of contaminated soils. The soils have been transported off-site for disposal. The area has been back-filled with clean soils.
    - Groundwater monitoring wells have been installed to assess impacts to groundwater. Initial sampling results are pending.
    - While there may be localized groundwater impacts, there are no impacts to water supplies in the area.
    - The South Dakota Department of Environment and Natural Resources (SD DENR) has the lead for oversight of the clean-up.
    - EPA is kept informed on the clean-up efforts.

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**----- UTAH-----**

- Air Quality Issues
  - Region 8 will meet with the senior leadership of Utah DEQ on March 15 to discuss the PM<sub>2.5</sub> SIPs and other air quality issues in Utah, and ensure that our understanding of the deadlines to complete the PM<sub>2.5</sub> SIP and other work is consistent with DEQ's understanding.
  - Three areas in Utah (Logan/Franklin, Salt Lake City, and Provo) were designated nonattainment on November 13, 2009 for the 24-hour PM<sub>2.5</sub> NAAQS of 35 µg/m<sup>3</sup>.
  - The Uinta Basin in eastern Utah has had monitored wintertime ozone exceedances in six of the last eight years that exceed both the 2008 (75 ppb) and 2015 (70 ppb) NAAQS due to significant existing oil and natural gas development (majority of which is on the Uintah & Ouray Reservation).
    - Region 8 has drafted a proposed FIP to reduce VOC emissions from existing oil and natural gas sources (which aligns with Utah's rules for new and existing oil and gas sources) and incorporates a streamlined permitting mechanism for new minor sources in a nonattainment area. OAR is also considering revising the national Indian country oil and gas FIP to address streamlined permitting once the Uinta Basin is designated nonattainment.
    - EPA is aware that if the U&O FIP is not finalized or the national Indian country FIP is not revised before the nonattainment designation for the Uinta Basin is made effective, EPA may need to issue source specific nonattainment permits to new oil and gas sources on the Reservation.
    - EPA is working expeditiously to finalize these FIPs to avoid the need to issue individual permits. We have drafted a U&O FIP (at HQ for review) that ensures a level playing field between state and Indian country jurisdictions that protects human health and the environment.

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**----- GENERAL INFORMATION -----**

- R8 Drinking Water lead initiative in support of Administrator's lead action plan
  - Region 8 has developed a lead action plan focusing on minimizing lead exposure from drinking water throughout Region 8 states which will complement the national plan under development.
  - Region 8's efforts will focus on three priority areas:
    - Promote protection of vulnerable populations by working with schools and day cares to encourage testing and remediation.
    - Address systems with high lead levels to accelerate actions necessary to reduce lead exposure, and ensure the affected communities are informed.
    - Continue to train water operators, including on locating and verifying lead service lines, and develop investigative tools to address any home with high lead levels.
  - Region 8 will be working closely with State Drinking Water Programs, Departments of Education and local governments to advance these efforts.
  - Region 8 is also closely coordinating with EPA Headquarters offices on these actions which could be used as a model for other regional lead action plans.